

Ordinance No. 26-06 is attached.

EXHIBIT "A"

ORDINANCE NO. 26-06

IMPACT FEE SCHEDULE

PARKS AND RECREATION

GOVERNMENT BUILDINGS

Table III-10
Proposed Parks and Recreation Impact Fee Schedule

Land Use	Residents per Unit ⁽¹⁾	Net Cost per Resident ⁽²⁾	Total Impact Fee ⁽³⁾
Single Family Detached			
- 0 to 1,500 sf	2.14	\$219.32	\$469.34
- 1,501 to 2,499 sf	2.41	\$219.32	\$528.56
- 2,500 sf or greater	2.63	\$219.32	\$576.81
Multi-family	1.70	\$250.46	\$425.78
Mobile Home	1.61	\$250.46	\$403.24

(1) Source: Section II, Table II-2

(2) Source: Table III-9

(3) Residents per unit (Item 1) for each land use category multiplied by net cost per resident (Item 2)

Proposed Government Buildings Impact Fee Schedule

Table IV-8 presents the proposed government buildings impact fee schedule developed for the City of DeBary for both residential and non-residential land uses, based on the net impact cost per functional resident presented in Table IV-7.

Table IV-8
Proposed Government Buildings Impact Fee Schedule

Land Use	Impact Unit	Functional Resident Coefficient ⁽¹⁾	Net Impact Fee per Functional Resident ⁽²⁾
Residential			
Single Family Detached			
- Less than 1,500 sf	du	1.41	\$165.65
- 1,500 to 2,499 sf	du	1.59	\$186.79
- 2,500 sf or greater	du	1.74	\$204.42
Multi Family	du	1.12	\$134.62
Mobile Home Park	du	1.06	\$127.41
Transient, Assisted, Group			
Hotel/Motel	room	0.64	\$76.93
Nursing Hom/ALF	bed	0.96	\$115.39
Recreational			
General Recreation/County Park	acre	0.20	\$24.04
Golf Course	hole	1.08	\$129.82
Movie Theater with Matinee	screen	5.98	\$718.80
Racquet Club/Health Club/Spa/Dance Studio	1,000 sf	3.09	\$371.42
Institutions			
Hospital	1,000 sf	1.65	\$198.33
Church	1,000 sf	0.57	\$68.51
Day Care Center	1,000 sf	0.89	\$106.98
Elementary School	Student	0.06	\$7.21
Middle School	Student	0.07	\$8.41
High School	Student	0.08	\$9.62
Junior/Community College	Student	0.06	\$7.21
University/College	Student	0.13	\$15.63
Office			
Office 50,000 SF or less	1,000 sf	1.42	\$170.68
Office 50,001 - 100,000 SF	1,000 sf	1.29	\$155.06
Office 100,001 - 200,000 SF	1,000 sf	1.10	\$132.22
Office 200,001 - 400,000 SF	1,000 sf	0.94	\$112.99
Office greater than 400,000 SF	1,000 sf	0.80	\$96.16
Medical Office/Clinic	1,000 sf	1.72	\$206.74
Business Park	1,000 sf	1.01	\$121.40

Table IV-8 (continued)
Proposed Government Buildings Impact Fee Schedule

Land Use	Impact Unit	Functional Resident Coefficient ⁽¹⁾	Net Impact Fee per Functional Resident ⁽²⁾
Retail, Gross Square Feet			
Specialty Retail	1,000 sf	1.69	\$203.14
Retail 50,000 GSF or less	1,000 sf	2.45	\$294.49
Retail 50,001 GSF to 200,000 GSF	1,000 sf	2.34	\$281.27
Retail 200,001 GSF to 400,000 GSF	1,000 sf	2.50	\$300.50
Retail greater than 400,000 GSF	1,000 sf	2.14	\$257.23
Pharmacy/Drug Store w/Drive-Thru	1,000 sf	1.96	\$235.59
Home Improvement Superstore	1,000 sf	1.78	\$213.96
Quality Restaurant	1,000 sf	6.82	\$819.76
High-Turnover Restaurant	1,000 sf	7.07	\$849.81
Fast Food Rest w/ Drive-Thru	1,000 sf	9.01	\$1,083.00
Quick Lube	bay	1.16	\$139.43
Supermarket	1,000 sf	2.05	\$246.41
Gas/Service Station	fuel pos.	1.98	\$238.00
Convenience Store w/Gas Pumps	1,000 sf	6.00	\$721.20
Convenience/Gas/Fast Food	1,000 sf	7.15	\$859.43
Auto Repair or Body Shop	1,000 sf	2.95	\$354.59
New and Used Car Sales	1,000 sf	1.71	\$205.54
Car Wash	1,000 sf	1.52	\$182.70
Furniture Store	1,000 sf	0.32	\$38.46
Bank/Savings Walk-in	1,000 sf	2.57	\$308.91
Bank/Savings Drive-in	1,000 sf	2.37	\$284.87
Industrial			
General Industrial/Industrial Park	1,000 sf	0.69	\$82.94
Manufacturing	1,000 sf	0.50	\$60.10
Warehouse	1,000 sf	0.39	\$46.88
Mini-Warehouse	1,000 sf	0.07	\$8.41

- (1) Source: Section II, Table II-5 for residential land uses and Table II-6 for non-residential land uses
- (2) Proposed impact fee determined by multiplying the net impact cost per functional resident (Table IV-7) by the functional resident coefficient (Item 1) for each land use

ORDINANCE NO. 26-06

AN ORDINANCE OF THE CITY OF DEBARY, FLORIDA, ADOPTING IMPACT FEES FOR GOVERNMENT BUILDINGS AND PARKS AND RECREATION FACILITIES, PROVIDING FOR SHORT TITLE, AUTHORITY, APPLICABILITY AND ADOPTION OF CITY OF DEBARY IMPACT FEE STUDY; PROVIDING FOR INTENT AND PURPOSE; PROVIDING DEFINITIONS AND RULES OF CONSTRUCTION; PROVIDING FOR THE IMPOSITION OF THE IMPACT FEES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR THE FEE SCHEDULE; PROVIDING FOR INDIVIDUAL ASSESSMENT; PROVIDING FOR CREDITS; PROVIDING FOR REVIEW OF THE ORDINANCE AND THE FEE SCHEDULE; PROVIDING FOR BENEFIT DISTRICTS; PROVIDING FOR THE USE OF FUNDS COLLECTED AND TRUST FUNDS; PROVIDING FOR REFUNDS; PROVIDING FOR UPDATES AND ANNUAL INFLATIONARY ADJUSTMENTS; PROVIDING FOR LIBERAL CONSTRUCTION AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE CITY OF DEBARY CODE; PROVIDING FOR PENALTIES; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the rapid rate of future growth and new development in the City of DeBary requires a substantial increase in capital government buildings and parks and recreation facilities (hereinafter known as "City Facilities"); and

WHEREAS, the DeBary City Council has determined that future growth and new development that creates the need for and benefits from the provision of new City Facilities should contribute its fair share of the cost of providing such facilities; and,

WHEREAS, the DeBary City Council has studied the necessity to implement impact fees for City Facilities, and has retained Tindale-Oliver and Associates, Inc. to prepare an Impact Fee Study (Government Buildings – Parks and Recreation) (hereinafter known as the "The City of DeBary Impact Fee Study"): dated October 9, 2006; and

WHEREAS, the City of DeBary Impact Fee Study sets forth reasonable methodologies for determining the impacts of new development, or "Impact-Generating Land Development," on City Facilities; and

WHEREAS, the DeBary City Council hereby adopts the methodologies and level of service standards relied upon in the City of DeBary Impact Fee Study as part of its ongoing comprehensive planning and capital improvement program; and

WHEREAS, the City of DeBary Impact Fee Study and the impact fees established by said report reflect the proportionate demand created by new Impact-Generating Land Development for additional City Facilities; and

WHEREAS, the DeBary City Council has determined that the impact fees calculated in the City of DeBary Impact Fee Study are based on the most recent and localized data; and

WHEREAS, this Ordinance includes procedures for accounting and reporting of impact fee collections and expenditures in order to assure compliance with applicable legal standards; and,

WHEREAS, this Ordinance includes separate accounting funds for each City Facility for which an impact fee is collected; and,

WHEREAS, the DeBary City Council has determined that a nexus exists between new Impact-Generating Land Development and the need for additional City Facilities; and

WHEREAS, the DeBary City Council has determined that new Impact-Generating Land Development creates additional needs for new City Facilities, which additional needs otherwise would not exist but for new Impact-Generating Land Development; and

WHEREAS, the DeBary City Council has determined that the provision of new City Facilities with proceeds from impact fees will result in a substantial and direct benefit to new Impact-Generating Land Development in a manner not shared by those not paying the fee; and

WHEREAS, an impact fee, which requires new Impact-Generating Land Development to contribute its fair share of the capital facility costs it creates, implements and is consistent with the City of DeBary Comprehensive Plan.

IT IS HEREBY ORDAINED BY THE CITY OF DeBARY AS FOLLOWS:

SECTION 1. SHORT TITLE, AUTHORITY, APPLICABILITY, AND ADOPTION OF CITY OF DEBARY IMPACT FEE STUDY

(a) Short Title. This Ordinance shall be known and may be cited as the "The City of DeBary Impact Fee Ordinance."

(b) Authorization. The DeBary City Council has the authority to adopt this Ordinance pursuant to Article VIII of the Florida Constitution and Chapter 125 and Sections 163.31801, 163.3201, 163.3202 and 380.06(16) of the Florida Statutes.

(c) Applicability. This Ordinance shall apply to the incorporated area of the City of DeBary to the extent authorized by the Florida Constitution, Article VIII, Section 1(g) and as specifically provided herein.

1. Incorporation of City of DeBary Impact Fee Study. The DeBary City Council has reviewed and accepted, and incorporates into this Ordinance

Ordinance No. 26-06

Impact Fees

Page 2

by reference, the report prepared by Tindale-Oliver and Associates, Inc. titled The City of DeBary Impact Fee Study and dated October 9, 2006 which establishes the need for and appropriate amount of impact fees for capital government buildings and parks and recreation facilities necessary to serve new development.

The City of DeBary Impact Fee Study is hereby adopted, as well as any updates or supplements thereto, including the assumptions, standards, and findings in the report and its amendments.

SECTION 2. INTENT AND PURPOSE

(a) Implementation of Comprehensive Plan. This Ordinance is intended to implement and be consistent with the City of DeBary Comprehensive Plan pursuant to Section 163.3161 et seq., Florida Statutes, the Florida Local Government Comprehensive Planning and Land Development Regulation Act.

(b) Contribution of Proportionate Share. This objective is accomplished by requiring all new Impact-Generating Land Development to contribute its proportionate share of the funds, land, or public facilities necessary to accommodate any impacts on City Facilities having a rational nexus to the proposed land development for which the need is reasonably attributable to the proposed development.

(c) Allocation of Fair Share Cost. This Ordinance is intended to be consistent with the principles for allocating a fair share of the cost of new City Facilities to new users as established by the Florida Statutes, the Florida Supreme Court, and the District Courts of Appeal of Florida.

SECTION 3. DEFINITIONS AND RULES OF CONSTRUCTION

(a) Definitions. For the purposes of this Ordinance, the following terms shall have the following meanings.

1. DeBary City Council means the City Council of the City of DeBary, Florida.
2. Building Permit means that development permit issued by the County of Volusia before any building or construction activity can be initiated on a parcel of land.
3. Capital Park Facilities mean capital improvements including land, land improvements, buildings, and equipment having a useful life of at least five years and a cost of at least \$5,000 necessary for the provision of park and recreation services to new Impact-Generating Development.

4. Capital Public Building Facilities mean capital improvements, including land, land improvements, equipment, buildings or other capacity-adding capital improvements with a cost of at least \$50,000, which are necessary for the provision of public services to new Impact-Generating Land Development.
5. Certificate of Occupancy means that development permit issued by the County of Volusia after completion of the final inspection for building or construction activity.
6. Commencement of Impact-Generating Land Development occurs upon any of the following events:
 - a. The approval of a Development of Regional Impact.
 - b. The issuance of any permit to authorize building or construction of any kind on the property.
 - c. The issuance of any Certificate of Occupancy.
7. City Facilities mean the capital facilities for which impact fees are imposed pursuant to this Ordinance.
8. Existing Impact-Generating Land Development means the most intense use of land within the twelve (12) months prior to the time of Commencement of Impact-Generating Land Development.
9. Fee Payer means a person commencing Impact-Generating Land Development who is obligated to pay an impact fee in accordance with the terms of this Ordinance.
10. Impact-Generating Land Development is land development designed or intended to permit a use of the land which will contain more dwelling units or floor space than the then existing use of the land or the making of any material change in the use of any structure or land in a manner that increases the generation of vehicular traffic or the demand on City Facilities. The type of proposed Impact-Generating Land Development shall be based on the proposed use of the land.
11. Land shall have the same meaning as set forth in Section 380.031(7), Florida Statutes.
12. Person means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a

joint or common interest, or any other entity.

(b) Rules of Construction. In the construction of this Ordinance, the rules set out in this section shall be observed unless such construction is inconsistent with the manifest intent of the DeBary City Council. The rules of construction set out here shall not be applied to any section of this Ordinance which contains any express provisions excluding such construction, or where the subject matter or content of such section would be inconsistent with this section.

1. Generally. All provisions, terms, phrases and expressions contained in this Ordinance shall be liberally construed in order that the true intent and meaning of the DeBary City Council may be fully carried out. Terms used in this Ordinance, unless otherwise specifically provided, shall have the meanings prescribed by the statutes of this state for the same terms.
2. Text. In case of any difference of meaning or implication between the text of this Ordinance and any figure, the text shall control.
3. Statutory References. All references to state law in this Ordinance refers to the Florida Statutes, as amended.
4. Computation of Time. Periods of time defined by a number of days shall mean a number of consecutive calendar days, including all weekend days, holidays, and other business days; however, if the last day is a Saturday, Sunday, or legal holiday, that day shall be excluded.
5. Delegation of Authority. City Manager will delegate and authorize professional-level subordinates to perform the required act or duty unless the terms of the provision or section specify otherwise.
6. Gender. Words importing the masculine gender shall be construed to include the feminine and neuter.
7. Month. The word "month" shall mean a calendar month.
8. Technical and Non-Technical Words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
9. Number. A word importing the singular number only, may extend and be applied to several persons and things as well as to one person and thing. The use of the plural number shall be deemed to include any single person or thing.

10. Mandatory and Discretionary Terms. The word "shall" is mandatory and "may" is permissive.
11. Tense. Words used in one tense (past, present or future) include all other tenses, unless the context clearly indicates the contrary.
12. Written or In Writing. The term "written" or "in writing" shall be construed to include any representation of words, letters or figures whether by printing or otherwise.
13. Year. The word "year" shall mean a calendar year, unless a fiscal year is indicated.

SECTION 4. FEE TO BE IMPOSED

(a) Fee Obligation, Determination and Payment.

1. General. After the effective date of this Ordinance, any person or governmental body who shall commence any Impact-Generating Land Development, except those exempted pursuant to Section 4 (a) (2), Exemptions, shall be obligated to pay an impact fee upon the commencement of Impact-Generating Land Development, pursuant to the fee schedule attached to his Ordinance as Exhibit "A" and incorporated herein by reference. The fee shall be determined and paid to the City Manager or a designee at the time of issuance of a building permit or any such approval as may be required to initiate an Impact-Generating Land Development. If the building permit or other approval is for less than the entire development, the fee shall be computed separately for the amount of development covered by the permit. If the fee is exacted for Impact-Generating Land Development that increases impact because of a change in use or the expansion of an existing use, the fee shall be determined by computing the difference in the fee schedule between the new Impact-Generating Land Development and the Existing Impact-Generating Land Development. The obligation to pay the impact fee shall run with the land.
2. Exemptions. The following development shall be exempt from the terms of this Ordinance. An exemption shall be claimed by the fee payer at the time of application for a building permit.
 - a. Alterations or expansion of an existing building where no additional dwelling units are created, the use is not changed or no additional impact will be made on the demand for City Facilities.

- b. The construction of accessory buildings or structures which will not increase the demand for City Facilities above that produced by the principal building or use of the land.
 - c. The replacement of a residential building or structure of the same size and use, as long as no additional dwelling units are added as such is defined by Section 201.00 of the Volusia County Zoning Ordinance as adopted by the City of DeBary Land Development Code.
 - d. The replacement of a nonresidential building or structure with a building of the same size and use is no increase in the demand for City Facilities.
 - e. All public educational and ancillary plants constructed by a district school Council or a community college district Council of trustees, pursuant to Section 1013.371(1)(a), Florida Statutes.
 - f. Charter school facilities, pursuant to Section 1002.33(18)(d), Florida Statutes.
3. Payment Deferral. For commercial, industrial, or other nonresidential development, the landowner may delay payment by executing a non-interest bearing promissory note payable to the City for the amount of the fee. The promissory note shall be paid prior to the issuance of a Certificate of Occupancy for the Impact-Generating Land Development. If the building permit is for less than the entire development, the fee shall be computed separately for the amount of the development covered by the permit. The obligation to pay the impact fee shall run with the land.
4. Dedication of Land or Facilities. Any land or facilities agreed to be dedicated to the City as a condition of development approval shall be dedicated by either easement or deed, at the discretion of the DeBary City Council, no later than the time at which impact fees are required to be paid under this section.
5. Fee Agreement. At any time prior to issuance of a building permit, the owner of property may enter into a Fee Agreement with the City of DeBary providing for payment of the fee pursuant to the terms of this Ordinance.
6. Administrative Charges. Any administrative charges associated with the collection of fees shall be limited to actual costs.

(b) Establishment of Fee Schedule.

1. Fee Schedule. Any person who shall initiate any new Impact-Generating Land Development, except those exempted pursuant to Section 4 (a) (2), Exemptions, or those preparing an Individual Assessment pursuant to Section 5, Individual Assessment, shall pay an impact fee as determined by the fee schedule attached to this Ordinance as Exhibit "A" and incorporated herein by reference.
2. Fee Computation.
 - a. If a building permit is requested for mixed uses, then the fee shall be determined according to the above schedule by apportioning the space committed to uses specified on the schedule.
 - b. If the type of Impact-Generating Land Development for which a building permit is requested is not specified on the fee schedule, the City Manager or designee shall determine the fee on the basis of the fee applicable to the most nearly comparable type of land use on the fee schedule, or if there is not a comparable land use, conduct an Individual Assessment pursuant to Section 5, Individual Assessment.
3. Three Year Review. At least once every three years, the City Manager shall recommend to the DeBary City Council whether any changes should be made to the impact fee schedule to reflect changes in the factors that affect the fee schedule. The purpose of this review is to analyze the effects of inflation on the actual costs of facilities, to assess potential changes in needs, to assess any changes in the characteristics of land uses, and to ensure that the fee charged new Impact-Generating Land Development will not exceed its pro rata share for the reasonably anticipated expansion costs of facilities necessitated by its presence.

SECTION 5. INDIVIDUAL ASSESSMENT

(a) Criteria for Use of Individual Assessment. One, several, or all components of the impact fee shall be computed by the use of an Individual Assessment if:

1. It is determined by the City Manager or a designee that the type of Impact-Generation Land Development being commenced is not one of those types listed on the fee schedule in Section 4 (b) (1), Fee Schedule; or
2. The potential fee payer chooses to have the amount of the fee determined by the use of an Individual Assessment; or

3. The City Manager or a designee concludes the nature, timing or location of the proposed Impact-Generating Land Development makes it likely to generate impacts costing substantially more to mitigate than the amount of the fee that would be generated by the use of the fee schedule.

(b) Preparation of Individual Assessment.

1. The potential fee payer shall be responsible for preparation of the Individual Assessment if the potential fee payer chooses to conduct the analysis. The City Manager or a designee shall be responsible for preparation of the Individual Assessment if the type of Impact-Generating Land Development being proposed is interpreted not to be one of those types listed in the fee schedule, or analysis of the proposed Impact-Generating Land Development concludes that the nature, timing or location of the proposed Impact-Generating Land Development make it likely to generate impacts costing substantially more than the amount of the fee generated by the use of the fee schedule.
2. The person who prepares the Individual Assessment shall be a qualified professional in the preparation of impact analysis, and shall be approved by the City Manager or a designee, on the basis of professional training and experience. If the City Manager or a designee is responsible for preparation of the assessment, they may request the fee payer to prepare the Individual Assessment, and credit the cost of such preparation against the impact fee.

(c) Individual Assessment Standards. The Individual Assessments shall be in accordance with the following standards.

1. City Facilities other than Capital Road Facilities. The Individual Assessment for any City Facilities shall determine if the proposed Impact-Generating Land Development is designed or located so that the occupants of the development will use the particular City Facility more or less than that projected in the fee schedule for the same City Facility. The City Manager or a designee will approve the methodology in writing prior to the applicant undertaking the Individual Assessment Study.

(d) Individual Assessment Procedure.

1. Submission of Application. An Individual Assessment shall be undertaken through the submission of an application of assessment of fiscal impact for the facility component for which an assessment is requested. An application may be considered if the DeBary City Council concludes that the application submitted for any proposed

Impact-Generating Land Development is interpreted as not being one of those types listed on the fee schedule, and for any proposed Impact-Generating Land Development for which it concludes the nature, timing, or location of the proposed development make it likely to generate impacts costing substantially more to mitigate than the amount of the fee that would be generated by the use of the fee schedule.

2. Determination of Completeness. Within twenty (20) days of receipt of an application, the City Manager or a designee shall determine if the application is complete. If it is determined that the application is not complete, a written statement shall be sent to the applicant, by mail, specifying the deficiencies. The application shall be deemed complete if no deficiencies are specified. The City Manager or a designee shall take no further action on the application until it is deemed complete.

3. Review of Application.

a. Within thirty (30) days of the date the application is determined complete, the City Manager or a designee shall review the application and render a written decision on whether the fee of the Impact-Generating Land Development that is the subject of the assessment should be modified, and if so, what the amount of the impact fee should be.

b. If, on the basis of generally-recognized principles of impact analysis and the most recent and localized data, it is determined the data, information and assumptions used by the applicant to calculate the Individual Assessment for the particular City Facility satisfies the requirements of this section and the standards in Section 5 (c), Individual Assessment Standards, the fee determined in the Individual Assessment shall be deemed the fee due and owing for the proposed Impact-Generating Land Development. The adjustment shall be set forth in a Fee Agreement which shall be entered into pursuant to Section 4 (a) 5, Fee Agreement. If the independent fee calculation study fails to satisfy the requirements of this section, the fee applied shall be that fee established in the fee schedule pursuant to Section 4 (b) 1, Fee Schedule.

(c) Appeal.

1. Application. A potential fee payer affected by the decision on an Individual Assessment may appeal the decision to the DeBary City Council, by filing with the City Manager or a designee within thirty (30) days of the date of the written decision, a written notice stating and specifying briefly the grounds of the appeal. The City Manager or a

designee shall place the appeal on the DeBary City Council agenda for the next regularly-scheduled meeting.

2. DeBary City Council's Decision. The DeBary City Council, after a hearing, shall have the power to affirm or reverse the decision. In making its decision, the DeBary City Council shall make written findings of fact and conclusions of law, and apply the standards in Section 5 (c), Individual Assessment Standards. If the DeBary City Council reverses the administrative decision, it shall direct the City Manager or a designee to recalculate the fee in accordance with its findings. In no case shall the DeBary City Council have the authority to negotiate the amount of the fee or waive the fee. The decision of the DeBary City Council shall be final.

SECTION 6. CREDITS

(a) General.

1. Application. Any person who shall initiate any Impact-Generating Land Development may apply for a credit against any impact fee assessed for City Facilities, pursuant to this Ordinance for any contribution, payment, construction, or dedication of land accepted and received by the City of DeBary for those capital facilities, including any contribution, payment, construction or dedication made pursuant to a development order issued by the City of DeBary pursuant to its local development regulations, Section 380.06, Florida Statutes, or any additional development requirement imposed by the Florida Land and Water Adjudicatory Commission on a development of regional impact. If the City increases the impact fee schedule pursuant to the terms of this Ordinance after a DRI development order is issued pursuant to Section 380.06, Florida Statutes, the DRI developer may petition the City and the City shall modify the affected provisions of the development order to give the DRI developer credit for any contribution of land for a public facility, or construction, expansion or contribution of funds for land acquisition or construction or expansion of a public facility, or portion thereof, required by the development order towards the needs met by the impact fee.
2. Amount of Credit for each Component. The credit provided for each component shall not exceed the total amount of the impact fees due and payable for the component for which the credit is proposed.
3. Transferability. Credit for contributions, payments, construction or dedications of an impact fee component shall not be transferable to another component. Credit shall be transferable within the same component and within the same development.

(b) City Facilities

1. General. For any credit against an impact fee, a proposed-contribution, payment, construction or dedication may be credited under the following conditions:
 - a. A credit of 100 percent of the fair market value may be provided for any contribution, payment, construction or dedication for a City Facility.
 - b. Any City Facility proposed for contribution, construction, payment, or dedication, which is owned by an entity other than the City must be accepted and approved by that entity prior to the approval of a credit under this section.
2. Establishment of Fair Market Value. Credit shall be in an amount equal to fair market value of the land dedicated at the time of dedication, the fair market value of construction at the time of its completion, or the value of the contribution or payment at the time it is made.

(c) Credit Agreement Procedures.

1. Submission of Application. The determination of any credit shall be undertaken through the submission of an application for credit agreement, which shall be submitted to the City Manager or a designee.
2. Application Contents. The application for credit agreement shall include the following information:
 - a. If the proposed application involves credit for the dedication of land:
 1. A drawing and legal description of the land;
 2. The appraised fair market value of the land at the date a building permit is proposed to be issued for the Impact-Generating Land Development, prepared by a professional Real Estate Appraiser who is a member of the Member Appraisal Institute (MAI) or who is a member of Senior Residential Appraisers (SRA); and if applicable;
 3. A certified copy of the development order in which the land was agreed to be dedicated.

- b. If the proposed application involves construction:
 - 1. The proposed plan of the specific construction prepared and certified by a duly qualified and licensed Florida engineer or contractor; and
 - 2. The projected costs for the suggested improvement, which shall be based on local information for similar improvements, along with the construction timetable for the completion thereof. Such estimated cost shall include the cost of construction or reconstruction, the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one year after completion of construction, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of professional services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction.

- c. If the proposed application involves a credit for any other contribution or payment:
 - 1. A certified copy of the development order in which the contribution or payment was agreed;
 - 2. If payment has been made, proof of payment; or
 - 3. If payment has not been made, the proposed method of payment.

3. Determination of Completeness. Within five (5) days of receipt of the proposed application for credit agreement, the City Manager or a designee shall determine if the application is complete. If it is determined that the proposed application is not complete, the City Manager or a designee shall send a written statement to the applicant outlining the deficiencies. No further action shall be taken on the proposed application until all deficiencies have been corrected or otherwise settled.

4. Review and Action

- a. For applications for credit under all components of this Ordinance, the City Manager or a designee, shall review the application within

twenty (20) days and grant the proposed credit if it meets the standards set forth in Section 6 (a) (b), as applicable.

5. Provisions in Credit Agreement. If the application for credit agreement is approved, a credit agreement shall be prepared and signed by the applicant and by the City. It shall specifically outline the contribution, payment, construction or land dedication, the time by which it shall be completed, dedicated, or paid, and any extensions thereof, and the dollar credit the applicant shall receive for the contribution, payment or construction.

(d) Appeal.

1. General. An applicant affected by the decision of the City Manager or a designee, on an application for credit agreement may appeal the decision to the DeBary City Council, by filing with the City Manager or a designee within thirty (30) days of the date of the written decision, a written notice stating and specifying briefly the grounds of the appeal. The City Manager or a designee shall place the appeal on the DeBary City Council agenda for the next regularly scheduled meeting.
2. DeBary City Council's Decision. The DeBary City Council, after a hearing, shall have the power to affirm or reverse the decision on an application for credit agreement. In making its decision, the DeBary City Council shall make written findings of fact and conclusions of law, and apply the standards in Section 6 (a) or (b) whichever is applicable. If the DeBary City Council reverses the decision, it shall direct the City Manager or a designee to readjust the credit in accordance with its findings. The decision of the DeBary City Council shall be final.

SECTION 7. USE OF FUNDS

- (a) Intent. Fees collected for City Facilities under this Ordinance are expressly and solely designated for the accommodation of impacts reasonably attributable to Impact-Generating Land Development.
- (b) Establishment of Trust Fund and Trust Accounts.
 1. General. There is hereby established the City of DeBary Impact Fee Trust Fund for the purpose of ensuring that the fees collected pursuant to this Ordinance are designated for the accommodation of impacts reasonably attributable to new Impact-Generating Land Development. The Trust Fund shall be divided into the following trust accounts:

- a. Park Benefit Trust Fund
 - b. Public Buildings Benefit Trust fund.
- (c) Deposit and Management of Trust Fund.
- 1. City. Upon collection by the City, all impact fees shall be deposited into the appropriate trust account in the City of DeBary Impact Fee Trust Fund.
 - 2. Investment of Proceeds. All proceeds shall be invested in-interest-bearing accounts. All income derived from these investments shall be retained in the trust fund until transferred or spent, whichever is appropriate. Record of each trust fund and account shall be available for public inspection.
- (d) Limitation on Expenditure of Fees in Trust Accounts.
- 1. Generally. Proceeds collected pursuant to this Ordinance shall be spent only in accordance with this subsection (d) and only on capacity-adding capital City Facilities, the need for which is created by and the provision of which will substantially benefit new Impact-Generating Land Development. Impact fee proceeds shall not be appropriated for operation or maintenance costs or to correct existing deficiencies or needs not created by new Impact-Generating Land Development.
 - 2. Park Component.
 - a. Proceeds collected from the park component of the fee and all interest accrued on such funds shall be used for park capital facilities and for constructing park capital facilities. The City shall be guided by the standards of the City of DeBary Comprehensive Plan.
 - 3. Government Building Component. Proceeds collected from the government building component of the impact fee and all interest accrued on such funds shall be used for capital public building facilities within the City of DeBary.
- (e) Annual Recommendation for Expenditure of Fees.
- 1. All Fees. For all fee components, each year, at the time the annual budget is reviewed, the City Manager or a designee shall propose appropriations to be spent from the individual trust accounts to the DeBary City Council. After review of the recommendations, the DeBary City Council shall either approve, modify, or deny the recommended expenditures of the trust account funds. Any amounts not appropriated from the trust accounts

together with any interest earnings shall be carried over in the specific trust account to the following fiscal period.

SECTION 8. RETURN OF FEES

(a) General. Any fees collected shall be returned to the fee payer or a successor in interest if the fees have not been spent within seven years from the date the building permit for the development was issued, along with interest of five (5) percent a year. Provided, however, that the DeBary City Council may by resolution extend for up to three years the date at which fees must be refunded. Such an extension shall be made upon a finding that within such three-year period, specific capital improvements are planned and evidenced by the adoption and incorporation into the City of DeBary Comprehensive Plan, that these capital improvements shall be constructed within the next three years, that these improvements are reasonably attributable to the fee payer's Impact-Generating Land Development; and that the fees whose time of refund is extended shall be spent for these capital improvements. Fees shall be deemed to be spent on the basis of the first fee collected shall be the first fee spent.

(b) Procedure. The refund of fees shall be undertaken through the following process.

1. General. A Refund Application shall be submitted within one year following the end of the seventh year from the date on which the building permit was issued on the proposed development. If the time of refund has been extended pursuant to Section 8 (a), General, the Refund Application shall be submitted within one year following the end of this extension. The Refund Application shall include the following information:
 - a. A copy of the dated receipt issued for payment of the fee;
 - b. A copy of the Certificate of Occupancy permit;
 - c. A copy of the receipt issued by the City for payment of the fee; and if applicable;
 - d. Evidence that the applicant is the successor in interest to the fee payer.
2. Determination of Completeness. Within 20 days of receipt of the Refund Application, the City Manager or a designee shall determine if it is complete. If the City Manager or a designee determines the application is not complete, a written statement specifying the deficiencies shall be sent by mail to the person submitting the application. Unless the deficiencies are corrected, the City Manager or a designee shall take no further action on the Refund Application.

3. Review and Decision. When the City Manager or a designee determines the Refund Application is complete, it shall be reviewed within 20 days.
4. Standards. The Refund Application shall be approved if it is determined the fee payer or the fee payer's successor in interest has paid a fee which the City has not spent within the period of time permitted under this section. The refund shall include the fee paid plus interest of five percent (5%) a year.
5. Appeal. Any fee payer or the fee payer's successor in interest may appeal the decision of a Refund Application by filing a petition with the DeBary City Council within thirty (30) days of the decision. In reviewing the decision, the DeBary City Council shall use the standards established in Section 9 (b) (4), Standards.

SECTION 9. ANNUAL INFLATIONARY ADJUSTMENTS

On July 1, 2007, and on July 1st of each year thereafter, the amount of any development impact fee may be adjusted by ordinance of the DeBary City Council to reflect inflationary increases in the cost of providing City Facilities. The DeBary City Council must base annual adjustments on the most recent data from the County of Volusia Property Appraiser, 20-City annual national average data from the Engineering News Record Construction Cost Index, the Consumer Price Index, or the Florida Department of Transportation as applicable. The methodology set forth in the City of DeBary Impact Fee Study shall be used for the annual adjustment and all statutory procedures and notice requirements shall apply.

SECTION 10. LIBERAL CONSTRUCTION, SEVERABILITY AND PENALTY

(a) Liberal Construction. The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes in the interest of the public health, safety, welfare and convenience.

(b) Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

(c) Violation; Remedies. A violation of this Ordinance shall be a misdemeanor punishable according to law; however, in addition to or in-lieu of any criminal prosecution, the City of DeBary shall have the power to sue in civil court to enforce the provisions of this Ordinance.

SECTION 11. INCLUSION IN THE CODE

It is the intention of the DeBary City Council, and it is hereby provided, that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of DeBary, Florida. To this end, the sections of this ordinance may be renumbered or relettered to accomplish such intention, and that the word "ordinance" may be changed to "section," "article," or other appropriate designation.

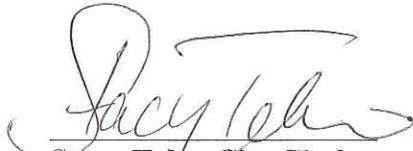
SECTION 12. EFFECTIVE DATE

Effective Date. This Ordinance shall become effective on the 90th day following the adoption of this Ordinance.

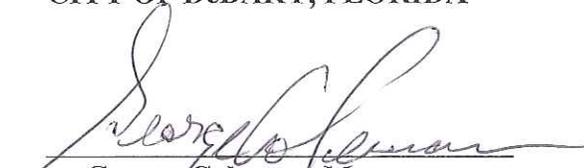
ADOPTED at First Reading held the 18th day of October 2006.

ADOPTED at Second Reading held the 1st day of November 2006.

ATTEST:


Stacy Tebo, City Clerk

**CITY COUNCIL
CITY OF DeBARY, FLORIDA**


George Coleman, Mayor